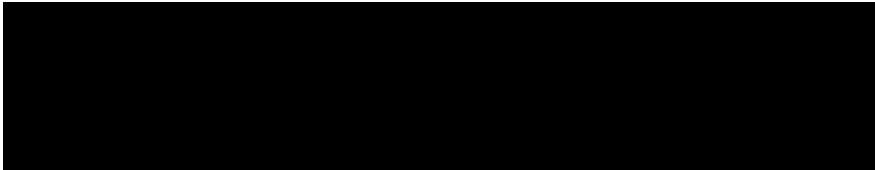


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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

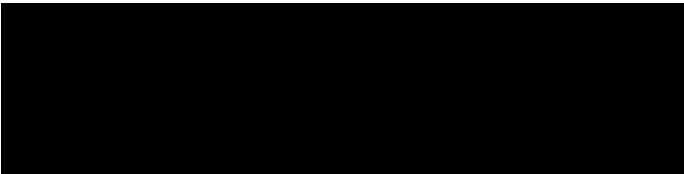


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JUL 13 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

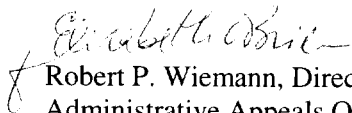
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent identity theft and
invasion of personal privacy

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Roman Catholic archdiocese. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a "religious." The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary, and that the beneficiary did not enter the United States as a religious worker.

On appeal, counsel maintains that the beneficiary performs qualifying religious duties as a seminarian, and that the Catholic Church recognizes the beneficiary's work as a vocation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

In this proceeding, the issues of the petitioner's past experience and the prospective job offer are somewhat interrelated, and thus we shall consider them together.

The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.” 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on March 5, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious duties throughout the two years immediately prior to that date, and that the beneficiary seeks to enter the United States in order to perform those same duties.

Rev. Fr. Pedro Corces, the petitioner’s director of vocations, states:

With ever-increasing foreign immigrant and United States populations relocating to South Florida, the Catholic parishioners of South Florida are desperately in need of religious services . . . a Religious such as [the beneficiary] is being requested to accept full-time Religious employment in order to address this unmet need. . . .

[The beneficiary] has been involved in Religious/Apostolic Works teaching religious courses, the Pastoral Ministry, as a Lector and as an Altar Server. [The beneficiary] began his ministry in 1998, and has performed various religious ministries at Immaculate Conception Parish in Colombia. He coordinated Holy Week activities and Jubilee Year special events. After his 2 years of religious ministries at [REDACTED] [the beneficiary] [REDACTED] Church [within the petitioning archdiocese]. In 2000, [the beneficiary] became an active member at San Isidro Parish and currently serves as a catechist for adults. He assists at special liturgies and serves as a lector and commentator including the church’s choir. He also performs various ministries such as visiting the homebound, teaching catechism, and involving the charismatic group, a spiritual movement of the Holy Roman Catholic Church.

[The beneficiary] seeks to pursue an authentic religious vocation with the [petitioning archdiocese]. He has been admitted to his year of seminary, and will enter St. John Vianney Seminary in August 2002, an essential step in the vocation process. . . . As noted, the seminary year represents an essential element in the pursuit of religious life.

Rev. Corces’ statements indicate that the beneficiary’s service as a religious is an intermediate step in the beneficiary’s career development, rather than a permanent vocation in its own right. Under a section headed

“his redeeming mission,” Rev. Corces states that the archdiocese intends “to provide well-trained ministers,” which suggests that the beneficiary seeks to become a priest.

The director instructed the petitioner to submit further details about the beneficiary’s work during the two-year qualifying period, and a detailed description of the position that the beneficiary intends to occupy. In response, counsel states “the Code of Federal Regulations defines a religious vocation . . . as ‘a calling to religious life.’” The full definition, at 8 C.F.R. § 204.5(m)(2), is “a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows.” A simple sense of calling, duty, or destiny cannot suffice. The petitioner has not shown any formal demonstration of commitment, such as the taking of vows. Because such vows are far from unknown within the Roman Catholic Church, the absence of this evidence is of concern.

Counsel asserts that the beneficiary “works in a religious vocation/occupation.” The terms “religious occupation” and “religious vocation” have separate definitions, and are mutually exclusive, rather than overlapping categories. Counsel repeatedly refers to the beneficiary as a “seminarian” and “a religious seminarian pursuing a vocation in the Roman Catholic Church.”

Rev. Corces, in a new letter, states that the beneficiary “[c]urrently . . . serves as a catechist for adults,” but he does not indicate that the beneficiary will remain in that position, or that he served as a catechist throughout the two-year period preceding the filing of the petition.

The director denied the petition, stating that an alien’s experience in “[a] training period without being ordained” is not qualifying experience for a special immigrant religious worker. The director also determined that the petitioner has not shown that the position of “religious” amounts to full-time, permanent employment in an occupation or vocation.

On appeal, counsel states “[t]he pursuit of a priestly vocation within the Roman Catholic Church consists of several significant components. . . . [The beneficiary] is carrying on his vocation in the context of ‘priestly formation’ in residence at St. John Vianney Seminary.” Counsel asserts that the beneficiary follows “the norms of priestly formation.”

It is increasingly apparent from the record (for instance, references to “priestly formation” and “pursuit of a priestly vocation”) that the beneficiary seeks ultimately to become an ordained priest, but that he has not yet reached the level of qualification necessary to do so, and is continuing his studies in this regard. Pursuant to the plain wording of the statute and regulations, if the beneficiary seeks to enter the United States to work as a priest, then he must have at least two years of experience *as a priest* immediately prior to the petition’s filing date. Experience in lesser positions, coupled with the intention of becoming a priest, cannot suffice. To hold otherwise would clearly be against the intent of Congress. The fact that the church requires some religious duties of its seminarians is not sufficient to show that “seminarian” is, itself, a vocation or occupation. In a 1980 decision, the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Because the beneficiary’s current status as a seminarian is an inherently temporary step on the road to the priesthood, and because the beneficiary was not yet a priest at the time of filing, we cannot find that the beneficiary was a qualifying religious worker at the time of filing. At best, this petition appears to have been filed prematurely, and this decision is without prejudice to any future filing, submitted at least two years after

the beneficiary has completed his studies and commenced to carry on the vocation of an authorized (ordained) priest of the Roman Catholic Church.

While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The final issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), requires that the alien seeking classification "seeks to enter the United States . . . solely for the purpose of carrying on the vocation of a minister." In this instance, the beneficiary entered the United States illegally, without inspection, and sought no change of status prior to the filing of the petition. Thus, the director concluded, the beneficiary did not enter the United States solely for the purpose of working as a minister.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks to enter*," which describes the entry as a future act. While the beneficiary's lack of valid nonimmigrant status would raise questions of admissibility at the adjustment stage, under current law this does not inherently disqualify the beneficiary for the classification sought. We therefore withdraw this particular finding by the director.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.